



State of Washington
Department of Revenue

Excise Tax Advisory

Excise Tax Advisories (ETA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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STATUTE OF LIMITATIONS NOT A DEFENSE WHEN MATERIAL FACT MISREPRESENTED

Issued December 16, 1966

May a taxpayer successfully claim an additional tax assessment barred by the four-year statute of limitations when the business activity was registered as originating a year later than the factual opening date?

Taxpayer, engaged in certain public works contracts, registered with the Tax Commission stating the commencement day to be a year later than the actual case. When an audit revealed additional tax due, the taxpayer claimed the tax assessed to the period represented by the discrepancy in the registered and factual opening date to be barred by the four-year statute of limitations, it was claimed the false opening date was not a deliberate misrepresentation of fact, since when the firm registered, clearance was being sought from the Tax Commission on a particular public works contract.

RCW 82.32.050 states

"No assessment or correction of an assessment for additional taxes due may be made by the commission more than four years after the close of the tax year, except . . . (2) upon a showing of fraud or of misrepresentation of a material fact by the taxpayer. . . "

The Commission noted that the portion of the statute quoted above is not limited to wilful or malicious misstatements of material facts. If the taxpayer had given a correct opening date at the time of registration, the tax due for the unreported periods would have been collected at that time. It is this situation which the legislature must have contemplated in denying the protection of the statute of limitations to any person guilty of fraud or of the misstatement of material fact. Excise taxes are self-assessing and the burden of responsibility for filing tax returns and accurately reporting true tax liability thereon is imposed upon the taxpayer. (Order.)

ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.

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